## REMARKS/ARGUMENTS

Claims 57-67 are pending. By this Amendment, claims 48-52 are canceled in favor of new claims 57-67. In addition, non-elected claims 1-47 and 53-56 have been canceled. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Applicant notes that the original application did not include a Figure 41. Accordingly, the brief description of the drawings and other relevant parts of the specification have been amended to eliminate reference to Figure 41. In addition, original Figures 42-49 have been renumbered as 41-48, and the specification has been amended accordingly.

New claim 57 is directed to a method of blending food product in a container in which the container is charged with food product which is cooled to a storage temperature, the container is fitted with a blending element located in the container, a closure member is applied to the top of the container to seal the container, the container is located in a blending position, the food product is subjected to microwave energy to bring the food product from the storage temperature to the desired temperature for blending, in said blending position, the blending element is releasably located in driving engagement with a drive motor extending through and adjacent to the closure member to blend the food product in the container, and the blended food product is dispensed from the container.

Claim 48 was rejected under 35 U.S.C. §102(b) over Purkapile. Inasmuch as this rejection applies to new claim 57, it is respectfully traversed.

Purkapile is directed to a manual juicer which grinds the components and mixes by reciprocal action. Purkapile does not teach or disclose subjecting the food product to microwave energy. Reconsideration and withdrawal of the rejection is respectfully requested.

Claim 48 was rejected under 35 U.S.C. §102(b) over Miller. Inasmuch as this rejection applies to new claim 57, it is respectfully traversed.

Miller is directed to a flavor-injected blending apparatus for the addition of flavoring to a milkshake at the time of blending. It uses a conventional blender which is used in a conventional manner. The milkshake is not subjected to microwave energy to bring the food product from the storage temperature to the desired temperature for blending, in said blending position. In addition, the blending element is not releasably located in driving engagement with the drive motor extending through and adjacent to the closure member to blend the food product in the container, per claim 57.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 48 was rejected under 35 U.S.C. §102(b) over Gordon. Inasmuch as this rejection applies to new claim 57, it is respectfully traversed.

Gordon does not teach or suggest that the food product is subjected to microwave energy, in the blending position, per claim 57. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 48-51 were rejected under 35 U.S.C. §102(e) over Chung. Inasmuch as this rejection applies to claim 57, it is respectfully traversed.

Chung does not teach that the container is fitted with a blending element located in the container. Instead, the sweeper 40 of Chung is mounted on the hot plate 30. See column 2, lines 57-59. In addition, Chung does not teach that the blending element is releasably located in driving engagement with the drive motor. There is no disclosure in Chung that the sweeper 40 is releasably located in driving engagement with the drive motor, as recited claim 57.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 48 was rejected under 35 U.S.C. §102(e) over Hochstein et al. Inasmuch as this rejection applies to claim 57, it is respectfully traversed.

At the outset, it is respectfully requested that the Patent Office officially make Hockstein et al. of record since it is not listed on the Form PTO-892. Attached hereto is a Form PTO-1449 which lists Hockstein et al. The Examiner is requested to initial and return this form with the next Office Action.

Hockstein et al. does not teach or disclose a method in which the food product is subjected to microwave energy to bring the food product from the storage temperature to the desired temperature for blending, in the blending position, per claim 57. Applicant respectfully submits that Hockstein et al. deliberately seeks to avoid having to heat the product before blending.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 49 was rejected under 35 U.S.C. §103(a) over Miller in view of Wade et al. This rejection is respectfully traversed as Miller does not teach or suggest the subject matter of claim 57, for reasons described above. Wade et al. does not make up for those deficiencies.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 50-52 were rejected under 35 U.S.C. §103(a) over Miller in view of Wade et al. and Boulard. This rejection is respectfully traversed because Miller does not teach or suggest the subject matter of claim 57, for reasons described above. Boulard does not make up for these deficiencies as it was only relied upon to show internal antenna.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 48 was rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-9 of U.S. Patent No. 6,338,569. However, claims 1-9 of the '569 patent

do not teach or suggest the subject matter of new claim 57. Claims 1-9 of the '569 patent do not disclose that a closure member is applied to the top of the container to seal the container, the container is located in a blending position, the food product is subjected to microwave energy to bring the food product from the storage temperature to the desired temperature for blending, in said blending position, and/or that the blending is releasably located in driving engagement with the drive motor extending through and adjacent to the closure member to blend the food product in the container.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 49 was rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-9 of the '569 patent, in view of Chirnomas. This rejection is respectfully traversed as Chirnomas does not make up for the deficiencies noted above with respect to claims 1-9 of the '569 patent. In addition, although Chirnomas teaches the general use of microwave energy to thaw a frozen product, it does not teach that the product is subjected to microwave energy to bring the food product from the storage temperature to the desired temperature for blending, in said blending position. Chirnomas also does not make up for the other deficiencies noted above with respect to claims 1-9 of the '569 patent.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claims 50-52 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-9 and further in view of Boulard. This rejection is respectfully traversed as Boulard does not make up for the deficiencies noted above with respect to claims 1-9 of the '569 patent.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 48 was rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-5 of U.S. Patent No. 6,616,323 (the '323 patent). Inasmuch as this rejection applies to new claim 57, it is respectfully traversed.

Claims 1-5 do not recite that the container is charged with a food product which is cooled to a storage temperature, that the container is fitted with a blending element located in the container, that the food product is subjected to microwave energy to bring the food product from the storage temperature to the desired temperature for blending, in said blending position, or that the blending element is releasably located in driving engagement with a drive motor extending through and adjacent the closure member to blend the food product in the container.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 49 was rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-5 of the '323 patent, and further in view of Chirnomas. This rejection is respectfully traversed as Chirnomas only discloses the use of heating via microwave energy, and does not make up for the deficiencies noted above with respect to claims 1-5 of the '323 patent. Although Chirnomas discloses the use of microwave energy, it does not teach that the food product is subjected to microwave energy in said blended position, per claim 57.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 50-52 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-5 of the '323 patent, and further in view of Boulard. This rejection is respectfully traversed as Boulard does not make up for the deficiencies noted above with respect to claims 1-5 of the '323 patent. Reconsideration and withdrawal of the rejection are respectfully requested.

In view of the above amendments and remarks, Applicant respectfully submits that all the claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: _____

Paul T. Bowen
Reg. No. 38,009

PTB:jck
Attachments:
Figures 41-48
Form PTO-1449

1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100